

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,
Plaintiff/Respondent
v.
Miguel Angel Luna-Rugama,
Defendant/Petitioner

2:14-cr-0318-JAD-PAL-1
Order Dismissing § 2255 Motions
[ECF Nos. 24, 25, 31]

After his 2015 conviction for being a deported alien found unlawfully in the United States in violation of 8 U.S.C. § 1326, defendant Miguel Angel Luna-Rugama challenged his conviction under 28 U.S.C. § 2255.¹ He then moved to voluntarily dismiss his § 2255 motion under Rule 41(a) of the Federal Rules of Civil Procedure.²

Although the government disputes that an FRCP 41(a) dismissal is appropriate, I find that it is. Rule 12 of the Rules Governing Section 2255 Proceedings allows the court to apply the Federal Rules of Civil Procedure “to the extent that they are not inconsistent with any statutory provisions or” the Section 2255 Rules. Rule 3 of the 2255 Rules provides guidance for dismissing a motion “[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief,” but it offers no course of action for a defendant to voluntarily dismiss his 2255 challenge before the court has evaluated its merits. I thus find that FRCP 41(a) fills a gap in the 2255 Rules and supplies a vehicle for the relief that the defendant seeks.

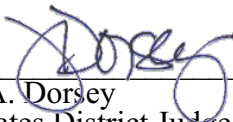
Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion for Voluntary Dismissal of Pending Motion to Vacate, Set Aside, or Correct Criminal Convictions and Sentence Pursuant to 28 USC § 2255 [ECF No. 31] is **GRANTED**;

¹ ECF Nos. 24, 25.

² ECF No. 31.

1 IT IS FURTHER ORDERED that defendant's § 2255 motions [ECF Nos. 24, 25] are
2 DISMISSED and all remaining deadlines are VACATED.

3 DATED: July 24, 2017.

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6 Jennifer A. Dorsey
7 United States District Judge
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